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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/641,081	08/16/2000	Carsten Rosenow	3334.1	3725

22886 7590 03/01/2004

AFFYMETRIX, INC  
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EXAMINER

ZHOU, SHUBO

ART UNIT PAPER NUMBER

1631

DATE MAILED: 03/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



## UNITED STATES DEPARTMENT OF COMMERCE

## U.S. Patent and Trademark Office

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT

PAPER

022604

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

## Commissioner for Patents

The communication filed on 1/15/04 is still deemed non-responsive to the prior office action, mailed 1/16/02, because of the following reason:

The previous Office letter mailed on 12/12/03 indicated that applicants' reply should comply with the revised 37 CFR 1.121 with respect to the format of amendments to the specification and to the claims. However, the format for the amendment to the claims filed 1/15/04 is still not in compliance with the rules. Specifically, the complete list of all of the claims does not commence on a separate sheet of the amendment paper. The revised 37 CFR 1.121 (c)(1) requires that any sheet of an amendment paper including part of the text of a claim shall not include material directed to any other part of the amendment or any remarks concerning the claims. Please see the attached relevant portion of the revised 37 CFR 1.121 (pages 38628-38630 of Federal Register/ Vol. 68, No. 125, June 30, 2003).

If a complete reply has not been submitted by the time the period set in the Office communication mailed 12/12/03 has expired, this application will become abandoned under 37 CFR 1.821(g) unless applicant corrects the deficiency and obtains an extension of time under 37 CFR 1.136(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shubo (Joe) Zhou, whose telephone number is 571-272-0724. The examiner can normally be reached Monday-Friday from 8 A.M. to 4 P.M. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, Ph.D., can be reached on 571-272-0722. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Any inquiry of a general nature or relating to the status of this application should be directed to Patent Analyst William Phillips whose telephone number is 571-272-0548, or to the Technical Center receptionist whose telephone number is (703) 308-0196. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Shubo (Joe) Zhou, Ph.D.  
Patent Examiner

JOHN S. BRUSCA, PH.D.  
PRIMARY EXAMINER

paragraphs (b)(1) through (b)(5) of this section in order to avoid abandonment of the application in the case of an applicant for patent, termination of proceedings in the case of a patent owner in a reexamination proceeding, or refusal of consideration of the papers in the case of a third party requester in a reexamination proceeding.

■ 7. Section 1.59 is revised to read as follows:

**§ 1.59 Expungement of information or copy of papers in application file.**

(a)(1) Information in an application will not be expunged, except as provided in paragraph (b) of this section.

(2) Information forming part of the original disclosure (i.e., written specification including the claims, drawings, and any preliminary amendment specifically incorporated into an executed oath or declaration under §§ 1.63 and 1.175) will not be expunged from the application file.

(b) An applicant may request that the Office expunge information, other than what is excluded by paragraph (a)(2) of this section, by filing a petition under this paragraph. Any petition to expunge information from an application must include the fee set forth in § 1.17(h) and establish to the satisfaction of the Director that the expungement of the information is appropriate in which case a notice granting the petition for expungement will be provided.

(c) Upon request by an applicant and payment of the fee specified in § 1.19(b), the Office will furnish copies of an application, unless the application has been disposed of (see §§ 1.53(e), (f) and (g)). The Office cannot provide or certify copies of an application that has been disposed of.

■ 8. Section 1.71 is amended by adding paragraph (f) to read as follows:

**§ 1.71 Detailed description and specification of the invention.**

(f) The specification must commence on a separate sheet. Each sheet including part of the specification may not include other parts of the application or other information. The claim(s), abstract and sequence listing (if any) should not be included on a sheet including any other part of the application.

■ 9. Section 1.72 is amended by revising paragraph (b) to read as follows:

**§ 1.72 Title and abstract.**

(b) A brief abstract of the technical disclosure in the specification must

commence on a separate sheet, preferably following the claims, under the heading "Abstract" or "Abstract of the Disclosure." The sheet or sheets presenting the abstract may not include other parts of the application or other material. The abstract in an application filed under 35 U.S.C. 111 may not exceed 150 words in length. The purpose of the abstract is to enable the United States Patent and Trademark Office and the public generally to determine quickly from a cursory inspection the nature and gist of the technical disclosure.

■ 10. Section 1.75 is amended by revising paragraph (h) to read as follows:

**§ 1.75 Claim(s).**

(h) The claim or claims must commence on a separate physical sheet or electronic page. Any sheet including a claim or portion of a claim may not contain any other parts of the application or other material.

■ 11. Section 1.98 is amended by adding paragraph (e) to read as follows:

**§ 1.98 Content of information disclosure statement.**

(e) The requirement in paragraph (a)(2)(i) of this section for a copy of all listed U.S. patents and U.S. patent application publications does not apply to any information disclosure statement submitted in compliance with the Office's electronic filing system.

■ 12. Section 1.99 is amended by revising paragraphs (d) and (e) to read as follows:

**§ 1.99 Third-party submission in published application.**

(d) A submission under this section shall not include any explanation of the patents or publications, or any other information. The Office will not enter such explanation or information if included in a submission under this section. A submission under this section is also limited to ten total patents or publications.

(e) A submission under this section must be filed within two months from the date of publication of the application (§ 1.215(a)) or prior to the mailing of a notice of allowance (§ 1.311), whichever is earlier. Any submission under this section not filed within this period is permitted only when the patents or publications could not have been submitted to the Office earlier, and must also be accompanied by the processing fee set forth in § 1.17(i). A submission by a member of

the public to a pending published application that does not comply with the requirements of this section will not be entered.

■ 13. Section 1.121 is revised to read as follows:

**§ 1.121 Manner of making amendments in applications.**

(a) *Amendments in applications, other than reissue applications.*

Amendments in applications, other than reissue applications, are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made.

(b) *Specification.* Amendments to the specification, other than the claims, computer listings (§ 1.96) and sequence listings (§ 1.825), must be made by adding, deleting or replacing a paragraph, by replacing a section, or by a substitute specification, in the manner specified in this section.

(1) *Amendment to delete, replace, or add a paragraph.* Amendments to the specification, including amendment to a section heading or the title of the invention which are considered for amendment purposes to be an amendment of a paragraph, must be made by submitting:

(i) An instruction, which unambiguously identifies the location, to delete one or more paragraphs of the specification, replace a paragraph with one or more replacement paragraphs, or add one or more paragraphs;

(ii) The full text of any replacement paragraph with markings to show all the changes relative to the previous version of the paragraph. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived;

(iii) The full text of any added paragraphs without any underlining; and

(iv) The text of a paragraph to be deleted must not be presented with strike-through or placed within double brackets. The instruction to delete may identify a paragraph by its paragraph number or include a few words from the beginning, and end, of the paragraph, if needed for paragraph identification purposes.

(2) *Amendment by replacement section.* If the sections of the specification contain section headings

as provided in § 1.77(b), § 1.154(b), or § 1.163(c), amendments to the specification, other than the claims, may be made by submitting:

(i) A reference to the section heading along with an instruction, which unambiguously identifies the location, to delete that section of the specification and to replace such deleted section with a replacement section; and

(ii) A replacement section with markings to show all changes relative to the previous version of the section. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived.

(3) *Amendment by substitute specification.* The specification, other than the claims, may also be amended by submitting:

(i) An instruction to replace the specification; and

(ii) A substitute specification in compliance with §§ 1.125(b) and (c).

(4) *Reinstatement of previously deleted paragraph or section.* A previously deleted paragraph or section may be reinstated only by a subsequent amendment adding the previously deleted paragraph or section.

(5) *Presentation in subsequent amendment document.* Once a paragraph or section is amended in a first amendment document, the paragraph or section shall not be re-presented in a subsequent amendment document unless it is amended again or a substitute specification is provided.

(c) *Claims.* Amendments to a claim must be made by rewriting the entire claim with all changes (e.g., additions and deletions) as indicated in this subsection, except when the claim is being canceled. Each amendment document that includes a change to an existing claim, cancellation of an existing claim or addition of a new claim, must include a complete listing of all claims ever presented, including the text of all pending and withdrawn claims, in the application. The claim listing, including the text of the claims, in the amendment document will serve to replace all prior versions of the claims, in the application. In the claim listing, the status of every claim must be indicated after its claim number by using one of the following identifiers in a parenthetical expression: (Original), (Currently amended), (Canceled),

(Withdrawn), (Previously presented), (New), and (Not entered).

(1) *Claim listing.* All of the claims presented in a claim listing shall be presented in ascending numerical order. Consecutive claims having the same status of "canceled" or "not entered" may be aggregated into one statement (e.g., Claims 1-5 (canceled)). The claim listing shall commence on a separate sheet of the amendment document and the sheet(s) that contain the text of any part of the claims shall not contain any other part of the amendment.

(2) *When claim text with markings is required.* All claims being currently amended in an amendment paper shall be presented in the claim listing, indicate a status of "currently amended," and be submitted with markings to indicate the changes that have been made relative to the immediate prior version of the claims. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. Only claims having the status of "currently amended," or "withdrawn" if also being amended, shall include markings. If a withdrawn claim is currently amended, its status in the claim listing may be identified as "withdrawn—currently amended."

(3) *When claim text in clean version is required.* The text of all pending claims not being currently amended shall be presented in the claim listing in clean version, i.e., without any markings in the presentation of text. The presentation of a clean version of any claim having the status of "original," "withdrawn" or "previously presented" will constitute an assertion that it has not been changed relative to the immediate prior version, except to omit markings that may have been present in the immediate prior version of the claims of the status of "withdrawn" or "previously presented." Any claim added by amendment must be indicated with the status of "new" and presented in clean version, i.e., without any underlining.

(4) *When claim text shall not be presented; canceling a claim.*

(i) No claim text shall be presented for any claim in the claim listing with the status of "canceled" or "not entered."

(ii) Cancellation of a claim shall be effected by an instruction to cancel a particular claim number. Identifying the

status of a claim in the claim listing as "canceled" will constitute an instruction to cancel the claim.

(5) *Reinstatement of previously canceled claim.* A claim which was previously canceled may be reinstated only by adding the claim as a "new" claim with a new claim number.

(d) *Drawings.* One or more application drawings shall be amended in the following manner: Any changes to an application drawing must be in compliance with § 1.84 and must be submitted on a replacement sheet of drawings which shall be an attachment to the amendment document and, in the header, labeled "Replacement Sheet." Any replacement sheet of drawings shall include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is amended. All changes to the drawing(s) shall be explained, in detail, in either the drawing amendment or remarks section of the amendment paper.

(1) A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be included. The marked-up copy must be clearly labeled as "Annotated Marked-up Drawings" and must be presented in the amendment or remarks section that explains the change to the drawings.

(2) A marked-up copy of any amended drawing figure, including annotations indicating the changes made, must be provided when required by the examiner.

(e) *Disclosure consistency.* The disclosure must be amended, when required by the Office, to correct inaccuracies of description and definition, and to secure substantial correspondence between the claims, the remainder of the specification, and the drawings.

(f) *No new matter.* No amendment may introduce new matter into the disclosure of an application.

(g) *Exception for examiner's amendments.* Changes to the specification, including the claims, of an application made by the Office in an examiner's amendment may be made by specific instructions to insert or delete subject matter set forth in the examiner's amendment by identifying the precise point in the specification or the claim(s) where the insertion or deletion is to be made. Compliance with paragraphs (b)(1), (b)(2), or (c) of this section is not required.

(h) *Amendment sections.* Each section of an amendment document (e.g., amendment to the claims, amendment to the specification, replacement drawings, and remarks) must begin on a separate sheet.

(i) *Amendments in reissue applications.* Any amendment to the description and claims in reissue applications must be made in accordance with § 1.173.

(j) *Amendments in reexamination proceedings.* Any proposed amendment to the description and claims in patents involved in reexamination proceedings must be made in accordance with § 1.530.

(k) *Amendments in provisional applications.* Amendments in provisional applications are not usually made. If an amendment is made to a provisional application, however, it must comply with the provisions of this section. Any amendments to a provisional application shall be placed in the provisional application file but may not be entered.

■ 14. Section 1.125 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 1.125 Substitute specification.**

\* \* \* \* \*

(b) Subject to § 1.312, a substitute specification, excluding the claims, may be filed at any point up to payment of the issue fee if it is accompanied by a statement that the substitute specification includes no new matter.

(c) A substitute specification submitted under this section must be submitted with markings showing all the changes relative to the immediate prior version of the specification of record. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. An accompanying clean version (without markings) must also be supplied. Numbering the paragraphs of the specification of record is not considered a change that must be shown pursuant to this paragraph.

\* \* \* \* \*

■ 15. Section 1.173 is amended by revising paragraph (b)(3) to read as follows:

**§ 1.173 Reissue specification, drawings and amendments.**

\* \* \* \* \*

(b) \* \* \*

(3) *Drawings.* One or more patent drawings shall be amended in the following manner: Any changes to a patent drawing must be submitted as a replacement sheet of drawings which

shall be an attachment to the amendment document. Any replacement sheet of drawings must be in compliance with § 1.84 and shall include all of the figures appearing on the original version of the sheet, even if only one figure is amended. Amended figures must be identified as "Amended," and any added figure must be identified as "New." In the event that a figure is canceled, the figure must be surrounded by brackets and identified as "Canceled." All changes to the drawing(s) shall be explained, in detail, beginning on a separate sheet accompanying the papers including the amendment to the drawings.

(i) A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be included. The marked-up copy must be clearly labeled as "Annotated Marked-up Drawings" and must be presented in the amendment or remarks section that explains the change to the drawings.

(ii) A marked-up copy of any amended drawing figure, including annotations indicating the changes made, must be provided when required by the examiner.

\* \* \* \* \*

■ 16. Section 1.823 is amended by revising paragraph (a)(1) to read as follows:

**§ 1.823 Requirements for nucleotide and/or amino acid sequences as part of the application.**

(a)(1) If the "Sequence Listing" required by § 1.821(c) is submitted on paper: The "Sequence Listing," setting forth the nucleotide and/or amino acid sequence and associated information in accordance with paragraph (b) of this section, must begin on a new page and must be titled "Sequence Listing." The pages of the "Sequence Listing" preferably should be numbered independently of the numbering of the remainder of the application. Each page of the "Sequence Listing" shall contain no more than 66 lines and each line shall contain no more than 72 characters. The sheet or sheets presenting a sequence listing may not include material other than part of the sequence listing. A fixed-width font should be used exclusively throughout the "Sequence Listing."

\* \* \* \* \*

Dated: June 24, 2003.

James E. Rogan,  
Under Secretary of Commerce for Intellectual  
Property and Director of the United States  
Patent and Trademark Office.

[FR Doc. 03-16437 Filed 6-27-03; 8:45 am]

BILLING CODE 3510-16-P

**LIBRARY OF CONGRESS**

**Copyright Office**

**37 CFR Part 202**

[Docket No. RM 2003-2]

**Architectural Works**

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This document makes non-substantive, technical amendments to Copyright Office regulations.

**EFFECTIVE DATE:** June 30, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kent Dunlap, Principal Legal Advisor or Sandra L. Jones, Writer-Editor, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

**SUPPLEMENTARY INFORMATION:** The Copyright Office has reviewed its regulations and makes technical amendments to 37 CFR part 202. In 1990, the Architectural Works Copyright Protection Act amended 17 U.S.C. 101 to add the definition for "architectural work." The Act also exempts from copyright registration architectural works embodied in unpublished plans or drawings created before December 1, 1990, if the works remained unconstructed on December 31, 2002. Regulations pertaining to registration of architectural works are found at 37 CFR 202.11, and paragraph (d) of that section covers works excluded from protection. The time for unpublished works created before December 1, 1990, to become constructed has now expired. The technical amendments are intended to reflect the exclusion and to clarify that the full title of the amending legislation is the Architectural Works Copyright Protection Act, title VII of the Judicial Improvements Act of 1990, Public Law 101-650, 104 Stat. 5089, 5133.

**List of Subjects in 37 CFR Part 202**

Claims, Copyright.

**Final Rule**

■ For the reasons set forth in the preamble, 37 CFR part 202 is amended as follows:

**PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT**

■ 1. The authority citation for Part 202 continues to read as follows:

**Authority:** 17 U.S.C. 408, 702.

■ 2. Amend § 202.11 by adding "the Architectural Works Copyright